

### REMARKS

With the forgoing amendments, claims 7-11 have been canceled without prejudice and claims 21-23 have been added. Accordingly claims 21-23 are pending and at issue in the above identified patent application. In view of the foregoing amendments and the following remarks, reconsideration of the application is respectfully requested.

#### **The Rejection under 35 U.S.C. § 112**

Claims 7-11 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. While claims 7-11 have been canceled, claims 21-24 contain similar language and accordingly, the applicants will address the rejection herein.

The applicants respectfully traverse the rejection that the claims are indefinite. In particular, the examiner alleges that “it is not clear how one is able to determine whether the reflectivity and auto ignition points of the heat shield and foam core...are higher or lower with regards to one another if one only knows that the core is foam, and has no idea as to the material of either the cover of the heat shield.” (Office action of November 3, 2006, page 2). Further, the examiner states that it would be “virtually impossible to determine whether one is actually higher or lower than the other without making an assumption or educated guess.” (Id.).

It is well established, however, that the use of relative terms does not automatically render a claim invalid. See *Allergan Sales, Inc., v. Pharmacia & Upjohn, Inc.*, 42 U.S. P.Q.2d 1560 (S.D.Calif. 1997) citing *Seattle Box Co. v. industrial Crating & Packing*, 731 F.2d 818, 826 (Fed Cir. 1984). In particular, “when a word of degree is used the district court must determine whether the specification provides some standard for measuring that degree.” (Id.). Thus, the issue for determining definiteness is whether the question “relative to what” can be answered. (Id.; emphasis added).

In the present claims, the question of “relative to what” most certainly can and is answered. As noted by the examiner, the reflectivity and auto ignition points of the heat shield and foam core are defined relative to one another. One of ordinary skill in the art would most certainly be able to determine whether the materials chosen to construct a similar device would infringe the claims by simply measuring the material properties of the chosen materials and comparing them. It would be irrelevant whether one of ordinary skill in the art choose an aluminum material for the heat shield and a fabric cover (as assumed by the examiner), or whether the person of ordinary skill in the art choose any other suitable material. The test would still simply be whether these chosen materials had the noted physical properties when analyzed relative to one another.

Accordingly, for at least the foregoing reasons, it is respectfully submitted that claims 21-24 are sufficiently definite and the rejection under 35 U.S.C. §112 must be withdrawn. Moreover, the applicants respectfully note that the claims should not be limited to the materials suggested by the examiner.

### **The Rejections under 35 U.S.C. § 103**

Claims 7-11 were rejected as being unpatentable over Fairborn in view the previously identified material reflectivity chart. Claims 7-11 have been canceled and claims 21-24 have been added. It is respectfully submitted that all claims are allowable over these patents for the reasons set forth below.

### **Claims 21-24**

Independent claims 21-24 are each generally directed to a dock pad having a foam core, a cover disposed on the foam core and a plurality of heat shields layered between the cover and the core such that an air interface is present between adjacent layers. In particular, claim 21 recites, *inter alia*, a plurality of heat shields having a higher thermal conductivity than the foam core, claim 22 recites, *inter alia*, a plurality of heat shields having a higher

thermal conductivity than the cover, claim 23 recites, *inter alia*, a plurality of heat shields having a higher reflectivity than the foam core, and claim 24 recites, *inter alia*, a plurality of heat shields having a higher reflectivity than the cover. Support for these new claims can be found in the application as originally filed at, for example, page 6, line 7 et. seq. and FIG. 3.

Claims 7-11 were rejected as obvious over Fairborn in view of the reflectivity chart. Claims 7-11 were, however, directed to a single heat shield layer, while the current claims recite a plurality of heat shield layers separated by an air gap. Neither Fairborn nor the reflectivity chart, either alone or in combination, discloses or suggests a plurality of heat shields that define an air interface between adjacent heat shields.

In contrast, Fairborn is directed to the alleged sale of a 1000 series dock pad by Fairborn U.S.A. Without admitting that the Fairborn reference is prior art to the present application, the applicants note that Fairborn simply discloses a single layer of Foylon sandwiched between a foam core and a fabric cover. Fairborn does not disclose or suggest a plurality of heat shield layers as presently recited, let alone a plurality of heat shield layers separated by an air gap. Similarly, the reflectivity chart is directed to the physical characteristics of various materials, and does not disclose or suggest the any heat shield, let alone a heat shield as recited by the present claims.

As noted by the applicant in the specification as original filed, a plurality of heat shield layers provides for greater heat resistance and flexibility. Additionally, the addition of an air gap between the layers similar increases the thermal resistance of the heat shield layers. Neither Fairborn, nor the reflectivity chart teaches or suggests the use of multiple layers in conjunction with a dock pad, nor does either reference address the benefits of such an arrangement.

Therefore, due to the deficiencies in both Fairborn and the reflectivity chart, it follows that no combination of Fairborn and the reflectivity can render obvious claims 21-24. In

particular, because neither Fairborn nor the reflectivity chart discloses multiple heat shield layers, no combination of Fairborn and the reflectivity chart can result in a dock pad in which a plurality of heat shields are layered between a cover and a core such that an air interface is present between adjacent layers. Accordingly, it is respectfully submitted that claims 21-24 are in condition for allowance.

### **Conclusion**

Reconsideration of the application and allowance thereof are respectfully requested. If there is any matter that the examiner would like to discuss, the examiner is invited to contact the undersigned representative at the telephone number set forth below.

The Commissioner is hereby authorized to charge any deficiency in the amount enclosed or any additional fees which may be required during the pendency of this application to Deposit Account No. 50-2455.

Respectfully submitted,  
Hanley, Flight & Zimmerman, LLC  
150 South Wacker Drive  
Suite 2100  
Chicago, Illinois 60606

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/Keith R. Jarosik/  
Keith R. Jarosik  
Reg. No. 47,683  
Attorney for Applicants  
(312) 580-1133